In The

Supreme Court of the United States

No. 78-5283

JAMES A. JACKSON,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA AND R. ZAHRADNICK, WARDEN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS

MARSHALL COLEMAN
Attorney General of Virginia

LINWOOD T. WELLS
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Other Authority

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

Va. Code Ann. § 18.2-32 (1975) provides as follows:

> "Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful, delib-

erate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery, burglary or abduction, except as provided in § 18.2-31, is murder of the first degree, punishable as a Class 2 felony.

All murder other than capital murder and murder in the first degree is murder of the second degree and is punishable as a Class 3 felony."

QUESTIONS PRESENTED

I. Whether The Present Federal Habeas Standard For Reviewing The Sufficiency Of Evidence Supporting State Convictions Which Requires Some Evidence Should Be Rejected In Favor Of A Reasonable Doubt Standard.

II. Whether Jackson's Conviction Is Supported By Evidence Sufficient To Satisfy Due Process Standards.

III. Whether Jackson Should Be Resentenced For Conviction Of Second Degree Murder If The Evidence Is Deemed Insufficient To Support A First Degree Murder Conviction.

STATEMENT OF THE CASE

James A. Jackson (Jackson) was convicted of the first degree murder of Mary Houston Cole in the Circuit Court of Chesterfield County, Virginia. After exhausting his state court remedies, Jackson filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Virginia. The District Court granted the writ, holding that the evidence was insufficient for conviction because the record was entirely devoid of evidence of premeditation. The United States Court of Appeals for the Fourth Circuit, applying the same standard of review, reversed the District Court.

At Jackson's trial, the evidence indicated that on the day of the killing Jackson had engaged in target practice and was in possession of a revolver just before the shooting. Investigating police officials testified that Jackson admitted the killing, although insisting it was in self-defense. Several shots were fired at the scene of the crime, two of which entered the body of the victim. Evidence at trial, further, revealed that just prior to the killing Jackson and the victim intended to have sexual relations. There was also evidence that both Jackson and the victim had been drinking before the shooting.

SUMMARY OF THE ARGUMENT

I.

Proof of guilt beyond a reasonable doubt is constitutionally required to convict an individual of a crime in a state court. *In re Winship,* 397 U.S. 358 (1970).

The standard of review of state court convictions in federal habeas proceedings is whether there is some evidence supporting the conviction. *Thompson* v. *Louisville,* 362 U.S. 199 (1960). *In re Winship* did not require any change in the constitutional standard of review of state convictions in federal habeas proceedings.

Important practical concerns of effective use of judicial resources, finality of state criminal processes, minimizing federal-state judicial friction, and the doctrines of comity and federalism all require that federal habeas corpus review not be expanded by way of a reasonable doubt standard of review.

II.

Whether the standard of *Thompson* v. *Louisville* is applied, requiring some evidence to support the conviction, or

a reasonable doubt standard is applied, Jackson's conviction of first degree murder is supported by evidence sufficient to satisfy either standard.

III.

Should the Court determine that Jackson's conviction of first degree murder is not supported by evidence as required by applicable due process standards, the case should be remanded to the state court for resentencing since Jackson has not attacked the sufficiency of the evidence for a conviction of second degree murder, a lesser included offense.

ARGUMENT

I.

Where A Federal Habeas Corpus Petitioner Challenges The Sufficiency Of Evidence Supporting A State Court Conviction The Appropriate Standard Of Review Is Whether There Is Any Evidence To Support Conviction Announced In Thompson v. Louisville.

A.

THE DECISIONS OF THIS COURT ESTABLISH THE THOMPSON STANDARD AS THE APPROPRIATE FEDERAL REVIEW STANDARD.

Proof of guilt beyond a reasonable doubt has been the recognized constitutional standard required for criminal conviction before the trier of fact. *Miles* v. *United States,* 103 U.S. 304 (1881); *Davis* v. *United States,* 160 U.S. 469 (1895); *Leland* v. *Oregon,* 343 U.S. 790 (1952); *In re Winship,* 397 U.S. 358 (1970). The issue presented by this case does not call into question this universally accepted principle.

The vital importance of the reasonable doubt standard in criminal trials has been its function of reducing the risk of convictions based upon factual error. *In re Winship,* 397

U.S. 358, 375. The efficacy of this standard in eliminating erroneous convictions has been expressly recognized by the decisions of this Court. *Patterson* v. *New York,* 432 U.S. 197, 208 (1977); *In re Winship, supra,* at 372. Certainly this consideration supports the conclusion that the Commonwealth urges in this case—that federal courts reviewing state convictions challenged on sufficiency of the evidence grounds should limit their inquiry to whether there was some evidence supporting conviction.

The Commonwealth does not ask that the Court apply any new standard of review; instead, we urge that the settled standard of *Thompson* v. *Louisville,* 362 U.S. 199 (1960) is applicable here. *Thompson* held that on certiorari review of a Kentucky conviction this Court would determine only whether the conviction was supported by some evidence:

> "The ultimate question presented to us is whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment. Decision of this question turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all." 362 U.S. at 199.

The *Thompson* rule was reaffirmed in *Garner* v. *Louisiana,* 368 U.S. 157 (1961) and *Shuttlesworth* v. *Birmingham,* 382 U.S. 87 (1965). The same standard has been widely applied and generally understood as the appropriate standard of review by the federal courts of appeal throughout the country. *Grieco* v. *Meachum,* 533 F.2d 713, 721 (1st Cir. 1976), *cert. den. sub. nom.; Cassesso* v. *Meachum,* 429 U.S. 858 (1976); *Cunha* v. *Brewer,* 511 F.2d 894, 898 (8th Cir. 1975), *cert. den.* 423 U.S. 857 (1975); *United States ex rel. Horelick* v. *Criminal Court of N.Y.,* 507 F.2d 37, 40 (2d. Cir. 1974);

Crow v. *Eyman,* 459 F.2d 24, 25 (9th Cir. 1972), *cert. den.* 409 U.S. 867, *reh. den.* 409 U.S. 1029 (1972); *United States ex rel. Johnson* v. *Illinois,* 469 F.2d, 1297, 1299 (7th Cir. 1972), *cert. den.* 411 U.S. 920 (1972); *Holloway* v. *Cox,* 437 F.2d 412, 413 (4th Cir. 1971). Thus, it is well settled that in federal habeas corpus review of petitions claiming that a state conviction rests on insufficient evidence the relevant inquiry is whether any evidence supports the conviction. *Thompson, Garner, supra.*

Jackson offers no persuasive authority supporting his contention that a reasonable doubt standard is constitutionally required in federal habeas review. His reliance upon *In re Winship* is entirely misplaced. *Winship* dealt with the constitutional requirements of proof at trial and did not establish a standard for federal review of state convictions. 397 U.S. 358, 359. Contrary to the suggestion in Jackson's brief, *Winship* did not announce any new constitutional requirement in holding that proof at trial required proof beyond a reasonable doubt. *Winship, supra,* at 361-362; *Patterson* v. *New York,* 432 U.S. 197, 211 (1977). Thus, due process had required proof beyond a reasonable doubt at trial when *Thompson* v. *Louisville* established the rule that, in federal review of a state conviction, due process required only some evidence of guilt to uphold the conviction. *Winship* did not, as Jackson contends, alter due process requirements at trial and thereby necessitate change in the federal standard of review applied to state convictions. *Thompson* itself reveals that while due process may require proof beyond a reasonable doubt for state conviction, federal constitutional review of state convictions need not apply the same evidence standard.

B.

THERE ARE SOUND POLICY REASONS FOR APPLICATION OF THE THOMPSON STANDARD.

Jackson urges the Court to reject *Thompson* and expand the scope of federal habeas corpus review to inquire whether state convictions are founded upon evidence of guilt beyond a reasonable doubt. Cogent reasons for rejecting this invitation are set forth in the decisions of this Court.

In *Schneckloth* v. *Bustamonte,* 412 U.S. 218 (1973) Mr. Justice Powell discussed important and basic values to be considered in determining the proper bounds of federal habeas corpus review. 412 U.S. 218, 259. They include (i) the most effective use of limited judicial resources, (ii) the finality in criminal trials, (iii) minimizing friction between federal and state judicial systems, and (iv) the doctrine of federalism. Adoption of the reasonable doubt standard of review as Jackson suggests runs counter in effect to each of these important considerations.

Limited judicial resources will not be most efficiently used if the federal courts are saddled with the identical task the state courts are required to perform. Noting that most federal habeas corpus claims have been previously raised in state courts, Mr. Justice Powell succinctly said in *Schneckloth,* "if a job can be well done once, it should not be done twice." 412 U.S. 218, 259. The wisdom of this reasoning is even more compelling when applied to due process claims that a conviction is not supported by sufficient evidence. While other types of constitutional claims may not have been raised in the state courts through appeal or habeas corpus proceedings, every conviction necessarily involves a finding of guilt beyond a reasonable doubt. *In re Winship, supra.* Duplication of judicial effort is, therefore, the automatic result of adopting the reasonable doubt standard of review.

There can also be expected a growth in the number of habeas corpus petitions filed disproportionate to their merit.[1]

Adoption of the reasonable doubt standard by federal courts in habeas review would extinguish any finality that presently attends the state criminal process. The degree of finality which now obtains in a state court finding on the evidence exists largely because of the different standard of review applied in federal habeas proceedings. Elimination of the distinction between these standards eliminates virtually all finality to state convictions. Under the *Thompson* rule presently applied a reasonable balance is struck between societal interests in finality of criminal proceedings and the constitutional guarantee that an individual will not be illegally incarcerated.

Societal interest in the finality of state criminal proceedings has not been lightly assessed by this Court. It was deemed sufficiently important to bar a prisoner's habeas corpus claim that his conviction rested upon an illegally obtained confession because the prisoner had failed to comply with a contemporaneous objection rule in the state courts. *Wainwright* v. *Sykes,* 433 U.S. 72 (1977). The interest in finality does not, in the context of this case, require as in *Wainwright* the barring of a constitutional claim entirely, since the present rule of *Thompson* clearly allows federal habeas review of the evidence supporting state convictions. We strongly

[1] Federal habeas corpus review is not a small matter of concern to either the Federal Courts or the States. The number of Petitions filed in Federal District Courts by State prisoners increased from 127 in 1941 to 1,232 in 1962, as pointed out by Mr. Justice Clark in his dissent in *Fay* v. *Noia,* 372 U.S. 391 (1963). His prediction that a rash of new applications would follow the decision was certainly borne out by that fact that the number of Petitions had risen to 9,063 in 1970, and while they thereafter declined, they began to increase again in 1978 to 7,033. 1978 Annual Report of the Director, p. 76.

urge, however, that the assertion of constitutional claim should not be reviewed under a standard which obliterates the societal interests in finality. The present balance fostered by the *Thompson* rule is appropriate.

Moreover, the adoption of the reasonable doubt standard in federal habeas review can do little to reduce friction between the federal and state judiciaries. Allowing federal habeas review to become, in effect, a duplicative assessment of the trial evidence invites conflicting federal and state conclusions. Broad and repetitive federal oversight "renders the actions of state courts a serious disrespect in derogation of the constitutional balance between the two systems." *Schneckloth, supra;* Powell J. concurring, 412 U.S. at 263.

Adoption of the reasonable doubt standard would threaten the principles of federalism as laid down by our founding fathers. It would depreciate the dignity of the administration of justice by the separate states. The state Supreme Courts would be reduced to a position of absolute inferiority to all federal courts. What incentive would there then be for state judges to take scrupulous care that procedural fairness obtained in their courts if it were guaranteed that whatever were done would be second-guessed by a federal judge? Indeed, adoption of a reasonable doubt standard would ultimately make the federal courts the triers of fact in every criminal case. Are they any better equipped to measure the degrees of truth and to make the judgment leaps necessary in assessing evidence than are state trial courts? We say not.

Comity and federalism interests include, among other things, a "respect for state functions, a recognition of the fact that the entire Country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions . . ." *Younger* v. *Harris,* 401 U.S. 37, 44 (1971). To

establish federal habeas corpus as a *de novo* review of the evidence in state criminal proceedings is the antithesis of the doctrines of comity and federalism. Federal-state relations have been a significant concern in delineating the proper function of federal habeas corpus review. *Wainwright* v. *Sykes,* 433 U.S. 72, 89-90 (1977); *Francis* v. *Henderson,* 425 U.S. 536, 542 (1976).

In its present form federal review assures that due procedural regard is given in every state case and that the correct judicial tests measuring guilt and innocence are employed. But how can the federal courts, with economy and except at the cost of grevious damage to "Our Federalism," retry every state judgment? To change the standard here, in the face of the passionate appetite of convicted criminals to seek federal review, would only further burden the federal and state judicial machinery. The "cult of appeals" already strains our systems and gives rise to public cynicism that cases never end. To make federal review more rigorous would also impose increased and costly burdens on the state Attorneys General. Moreover the state trial stage of criminal proceedings would seem to count very little in the eyes of offenders and the public.

II.

Petitioner's Conviction Was Supported By Evidence Sufficient To Satisfy Due Process Of Law Under Either Standard.

The evidence presented at Jackson's trial proved his guilt of first degree murder beyond a reasonable doubt. His claim that he was denied due process is, therefore, unfounded.

At Jackson's trial, Gloria Farmer, Mrs. Cole's daughter, testified that her mother arrived home on August 24, 1974, at approximately 2:30 in the afternoon. She testified that

her mother then went to the grocery store and returned, with a six pack of beer. (App. 37.) She recalled that her mother left the house after supper and said she "might go to Carolina. . . ." At this point she estimated that her mother may have consumed two or three cans of beer. (App. 40.)

Sally Cole, Mrs. Cole's daughter-in-law, testified that on the date of the offense, she saw Jackson and her husband with a pistol target shooting. (App. 41-42.) She recalled that Jackson had been drinking that day since morning. (App. 42.) She testified that he had gone to a grocery store and bought twelve cans of beer. (App. 43-44.) Mrs. Cole had then come to the house, Jackson had gotten in the car with her, and they then left. She testified that Mrs. Cole was driving, and that she heard no argument between them. (App. 44.)

Mrs. Cole's son, Curtis Cole, testified that on the day of the offense he drove Jackson to the grocery store where he bought twelve cans of beer. (App. 48.) He further said he knew that Jackson had a pistol that day. (App. 47.) He testified that Jackson was "pretty well loaded" on the day of the offense. (App. 47.)

David A. Andrews, Deputy Sheriff, testified that Mary Cole had been a cook at the Chesterfield County Jail and that he had seen Jackson and her on several occasions talking at the jail. (App. 50.) He further recalled that on the date of the offense, he saw both Mrs. Cole and Jackson at the Chesterfield Diner shortly before her death. (App. 50.) Both had been drinking but Jackson appeared to have had more to drink. (App. 52.) Jackson staggered slightly and his eyes were bloodshot. (App. 52.) He also remembered that Jackson had shown him a revolver. (App. 52.) He said that he saw a knife in the front seat of Mrs. Cole's automobile and that he had suggested that Mrs. Cole drive because he thought she was better able to do so than Jackson. (App.

53.) But he did not however, conclude that Jackson was sufficiently drunk to arrest him for public drunkenness or to prevent him from leaving with his revolver. He stated that when the two were leaving the Diner, Jackson indicated that he and Mrs. Cole were going to have sexual relations and that Mrs. Cole "smiled and left and just laughed." (App. 56-57.)

Detective Mark Wilson testified that he investigated the offense and saw the victim's body before it had been removed from the scene of the crime. (App. 56-57.) He took photographs of the victim, one of which showed the victim clad only from the waist up. (App. 57.) Another photograph showed six shell casings approximately 8 feet from the body. (App. 57.)

Detective Wilson later obtained a statement from Jackson stating that Mrs. Cole had come to the place where he then was living in her car. Mrs. Cole asked him to go riding with her and the two of them drove to the Chesterfield Diner. (App. 58.) They had a sandwich and a cup of coffee and had walked back to the car, where they "had a few words, you know, arguing and she tried to stab me with a knife." (App. 58.) He stated that he pushed her back and hit her. He then went over to a grocery store and called a taxi. Mrs. Cole then drove up and asked him to ride with her. (App. 58.) Jackson stated that he got into the car and they drove to a church. He recalled that "we got messing around and she said that she wanted to have sex with me" and he had refused. (App. 58.) He further stated that she became angry and tried to stab him again and that he shot in the ground but that she kept trying to stab him. (App. 58.) He then stated that he loaded the gun and told her that he didn't want to have anything to do with her and that she threw the knife down and tried to take the gun from him. He then stated, "that's where it happened." (App. 58.) Mrs. Cole,

he said, tried to take the gun and that the gun "went off." (App. 58.) He said he then became panicky and drove to North Carolina. Later he went to Florida but had returned again to North Carolina.

When asked whether the victim had cut him when she swung at him with a knife, Jackson did not answer. (App. 59.) Jackson told police that he had drunk one-fifth of Old Crow, one-fifth of Wild Turkey, and a pint of something else. (App. 59-60.) But he further stated that the victim had drunk "half of the whiskey" and that they had bought two six packs of beer. (App. 60.) He described himself as "pretty high." (App. 60.) He stated that the victim was "almost drunk." (App. 60.) Jackson stated that he shot five times into the ground before he reloaded and the fatal shot was fired. (App. 60.)

Cleon Maeur, a firearms expert, testified that the revolver which was found in Jackson's possession was the same which fired the cartridge casings found at the scene of the crime, in the car, and at the site where target practicing had occurred. He also testified that there were two holes found in the clothes of the victim and that they were caused by bullets "fired from a firearm having a muzzle distance of approximately one inch from the garment. . . ." (App. 63.)

In The Commonwealth of Virginia, a necessary element of every offense of murder is that of malice. *Coleman* v. *Commonwealth,* 184 Va. 197, 35 S.E.2d 96 (1945); *Davis* v. *Slayton,* 353 F.Supp. 571 (W.D. Va. 1973); 10A *Va. and W.Va. Digest,* Homicide, § 11 (1972). But, if, in addition to malice, there is deliberation and premeditation, the offense is first degree murder. *Hairston* v. *Commonwealth,* 217 Va. 429, 230 S.E.2d 626 (1975); *Akers* v. *Commonwealth,* 216 Va. 40, 216 S.E.2d 28 (1975); *Perkins* v. *Commonwealth,* 215 Va. 69, 205 S.E.2d 385 (1974); *Painter* v. *Commonwealth,* 210 Va. 360, 171 S.E.2d 166 (1969); and *Shiflett* v.

Commonwealth, 143 Va. 609, 130 S.E. 777 (1925).

Premeditation need not exist for any particular length of time and may be formed at the moment of the commission of the act under Virginia law. *Commonwealth* v. *Brown,* 90 Va. 671, 19 S.E. 447 (1894); *Shiflett* v. *Commonwealth, supra.*

First degree murder is defined by statute, as follows:

> "[m]urder other than capital murder, by poison, lying in wait, imprisonment,, starving, or by any willful, deliberate, and premeditated killing. . . ." (Va. Code Ann. § 18.2-32).

Premeditation was thus a specific element of the crime of first degree murder which the Commonwealth was required to prove beyond a reasonable doubt. *In re Winship, supra.*

In Virginia, it has long been the law that intoxication may be such as to destroy premeditation, thus making a defendant liable for conviction only of second degree murder. *Hatcher* v. *Commonwealth,* 218 Va. 811, ... S.E.2d ..... (1978); *Drinkard* v. *Commonwealth,* 165 Va. 799, 183 S.E. 251 (1936); and *Little* v. *Commonwealth,* 163 Va. 1020, 175 S.E. 767 (1934). Thus, the Commonwealth had the burden under its own laws to prove the element of premeditation beyond a reasonable doubt notwithstanding any evidence of Jackson's intoxication.

Under the applicable *Thompson* standard there must be "some" evidence to support Jackson's conviction of first degree murder. There was unquestionably evidence of premeditation on Jackson's part. He was armed with a pistol on the day the offense was committed. There was evidence that he had been target shooting that day. The victim was shot twice, both shots having been fired at close range. Moreover, several other shots were fired at the scene of the crime.

The victim was clothed only from the waist up. Jackson had stated before the offense occurred that he intended to have sexual relations with the victim. Although it is true that there was no direct evidence that Mrs. Cole refused his sexual advances, in view of all the evidence, there was clearly a sufficient basis for a finding of premeditation.

Further, assuming the reasonable doubt standard urged by Jackson is applicable, there is sufficient evidence of premeditation to meet such a standard. The same evidence mentioned previously was sufficient to prove premeditation beyond a reasonable doubt.

Jackson's self-defense contentions centered on his statement to police that the victim had attempted to force herself upon him sexually and that he fired the shots in self-defense when she attempted to stab him after he refused her advances. This evidence was unpersuasive in view of the testimony that Jackson was the one who mentioned sexual intentions before leaving the diner with Mrs. Cole. Moreover it obviously strained the court's credulity to believe that Jackson could first shoot several times and then reload a gun while Mrs. Cole was trying to stab him. It is equally unlikely that she stood idly by while he reloaded, or that the gun "went off" twice, or that only after the gun was reloaded did she try to take it away from him. Jackson's statement to police was, in short, not believable in light of all the countervailing evidence. The clear indication of premeditation was not negated by this evidence.

Jackson also argues that he was intoxicated so as to make premeditation impossible. The trier of fact was the ultimate judge of the totality of the evidence and was fully able to judge the defense of intoxication. Jackson's own statement that he was able to reload his gun while managing to defend himself from Mrs. Cole's attack; his memory of details surrounding the shooting which indicated his mental ability and

alertness; and the Deputy Sheriff's apparent belief that Jackson was sufficiently sober, just before the shooting, to be able to travel with a revolver, all suggest that the intoxication defense was unpersuasive. The Court's rejection of the intoxication defense was a sound judgment.

In conclusion, whether the standard of review applicable to the instant case is to be that requiring "some" evidence of premeditation, or of proof beyond a reasonable doubt, the Commonwealth submits that either test has been satisfied.

III.

If Evidence Of Premeditation Was Insufficient For Conviction, Petitioner's Case Should Be Remanded To The State Courts For Resentencing.

In *Burks* v. *United States,* ..... U.S. ..... (June 14, 1978), this Court held that the Double Jeopardy Clause prohibits retrial of persons whose conviction had been reversed on appeal for insufficiency of the evidence.

In *Greene* v. *Massey,* ..... U.S. ..... (June 14, 1978), the appellant had been convicted in Florida of first degree murder. The Florida Supreme Court reversed the conviction without clearly stating its reasons and ordered a new trial. This Court, however, relying upon *Burks, supra,* stated that such retrial would violate Due Process of Law if reversal was based upon insufficiency of the evidence. Because of lack of clarity as to why the conviction had been reversed, the case was remanded for further proceedings, this Court, noting that:

> "Given our decision today to remand this case for reconsideration by the Court of Appeals, we need not reach the question of whether the State could, consistent with the Double Jeopardy Clause, try Greene for a lesser-included offense in the event that his first-degree murder conviction is voided." ..... U.S. ....., at p. ....., n. 7.

Under Virginia criminal statutes, premeditation is a necessary element of first degree murder. *See* Va. Code Ann. § 18.2-32, *infra,* p. 1. Murder in the second degree is a lesser-included offense of murder in the first degree. Since Jackson has not attacked the sufficiency of evidence relating to elements of second degree murder, if it is determined by this Court that the evidence was insufficient for conviction of first degree murder, the case should be remanded to the state courts for resentencing on second degree murder.

CONCLUSION

The present standard of federal review of state criminal convictions, requiring some evidence to support the conviction, should not be altered to require evidence beyond a reasonable doubt.

The evidence of Jackson's guilt of first degree murder satisfies either standard.

If Jackson's conviction of first degree murder is not supported by the evidence, his case should be remanded to the state court for resentencing for second degree murder.

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
and
R. ZAHRADNICK, *Warden*

By: .....
Counsel

MARSHALL COLEMAN
Attorney General of Virginia
LINWOOD T. WELLS
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I, Marshall Coleman, Attorney General of Virginia, and a member of the Bar of this Court, do hereby certify that three printed copies of the foregoing Brief of Respondents were mailed, postage prepaid, this 15th day of February, 1979, to Carolyn J. Colville, Esquire, Colville and Dunham, 2 North First Street, Richmond, Virginia 23219, Counsel for Petitioner.